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October 15, 2015
via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW, Room TW-A325
Washington, D.C. 20554

Re: Opposition to Petition for Exemption from the Commission's Closed
Captioning Rules
CGB Dkt. No. 06-181

WATC-TV/Community Television, Inc.
CGB-CC-1360

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Association of the Deaf-Blind (AADB), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, "Consumer Groups," respectfully submit this opposition to the petition of WATC-TV/Community Television, Inc. (Community Television) for exemption of their programming from the Federal Communications Commission's Closed Captioning Rules.

* DC bar membership pending. Practice supervised by members of the DC bar.

** Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

I. Legal Standard

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome." When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission considers the following factors on a case-by-case basis: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.¹ The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner's current assets, current liabilities, revenues, expenses, and other documentation "from which its financial condition can be assessed."²

II. Background

Community Television is a South Carolina non-profit corporation that is the licensee of WATC-TV in Atlanta, Georgia, a non-commercial educational television station.³ In 2006, Community Television filed a petition for exemption from the Commission's closed captioning rules for two programs which it produced and aired in-house on WATC-TV and also distributed to other channels: "*Babbie's House*" and "*Friends and Neighbors*."⁴ Community Television asserted a self-implementing exemption under Section 79.1(d)(12) of the Commission's rules as it did not have gross revenues greater than \$3 million. It also claimed an economic burden exemption from closed captioning the programs it provides to other outlets.⁵ TDI opposed this petition on the grounds that Community Television did not provide adequate financial information to determine if captioning would impose an economic burden.⁶ Community Television filed a reply comment to TDI's opposition.⁷

¹ *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶3 (2014).

² *Id.* at ¶¶ 13-14; *see also First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

³ *Community Television, Inc. Petition* (Aug. 1, 2006) at 1 (2006 Petition).

⁴ *Id.*

⁵ *Community Television, Inc. Reply* (May 3, 2007) at 2.

⁶ *See TDI Opposition Letter* (March 26, 2007) at 2.

⁷ *See Community Television, Inc. Reply* (May 3, 2007).

In 2012, the Bureau requested that Community Television either affirm the accuracy of the record or update the record following the *Anglers Reversal*.⁸ Community Television failed to do either by the deadline specified. As a result, the 2006 petition was dismissed without prejudice, and Community Television was required to caption its programs starting on July 6, 2012.⁹ There is no evidence in the record that Community Television has captioned its programming since this dismissal.

The current petition, filed June 3, 2015, asserts that Community Television qualifies for a self-implementing exemption with respect to programming on its own station under Section 79.1(d)(12) as it does not have gross revenues greater than \$3 million.¹⁰ Community Television also requests an economic burden exemption for new episodes of four programs that it provides to other stations: "*Babbie's House*," "*Friends and Neighbors*," "*Right Now with Jennifer Schuchmann*," and "*Gospel Music USA*."¹¹ Community Television further requests an exemption for its "library" of previously aired "*Babbie's House*" and "*Friends and Neighbors*" episodes that are currently aired by other stations.¹² The Bureau requested additional information on June 10, 2015,¹³ and Community Television filed a supplement on July 23, 2015.¹⁴ The petition was placed on Public Notice on September 15, 2015.¹⁵

⁸ See CGB Letter to Community Television (April 5, 2012) at 1.

⁹ *Notice of Exemption Dismissals and Obligation to Begin Providing Closed Captioning*, Public Notice, DA 12-1833, Dkt. 06-181, 23 (Nov. 14, 2012) (Notice of Dismissal).

¹⁰ WATC-TV/Community Television, Inc. Petition (June 3, 2015) at 2 (2015 Petition); see 47 CFR § 79.1(d)(12).

¹¹ 2015 Petition at 2.

¹² See WATC-TV/Community Television, Inc. Supplement (July 23, 2015) at 12-14 (2015 Supplement). In its 2015 Supplement, Community Television refers to captioning costs for the "[e]xisting library in rotation" of "*Right Now with Jennifer Schuchmann*" and "*Gospel Music USA*." *Id.* at 17. However, because the supplement says it provides "annual costs for captioning *new* episodes of the *four* series," *id.* at 12 (emphasis added), and because this is the only captioning figure provided for these programs, Consumer Groups treat these as "new programs." Regardless of how these costs and programs are characterized, the total cost of captioning all four programs is not economically burdensome.

¹³ See CGB Letter to WATC-TV/Community Television, Inc. (June 10, 2015).

¹⁴ See 2015 Supplement (July 23, 2015).

¹⁵ *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, DA 15-1029, Dkt. 06-181 (Sept. 15, 2015) (2015 Public Notice).

III. Community Television has not demonstrated that it would be economically burdensome to caption its programming.

Community Television provided two quotes for the captioning of its programs. The lower of the two was from Aberdeen Captioning. The total annual cost of captioning 318 new episodes¹⁶ would be \$124,510,¹⁷ which includes rollup captioning at \$185 per half-hour program,¹⁸ a one-time \$463.50 "station workflow fee,"¹⁹ high definition to standard definition down conversion,²⁰ and delivery of the captioned program to various outlets.²¹ For reasons discussed below, Consumer Groups believe these costs may be unnecessarily high. Nevertheless, they do not pose an economic burden.

Closed captioning would not impose an economic burden on Community Television. The organization experienced net revenues of \$107,472 in 2014²² and \$311,133 in 2013.²³ Community Television could have provided captioning using its revenue in 2013 and had \$187,086.44 remaining. While 2014 revenue would not have completely covered the cost of captioning, Community Television's net current assets could have covered the cost. Community Television had net current assets of \$1,119,768 in 2014²⁴ and \$789,378 in 2013.²⁵ If Petitioner had used 2014 current assets to cover the

¹⁶ This includes 88 episodes of "*Babbie's House*," 52 episodes of "*Friends and Neighbors*," 76 episodes of "*Gospel Music USA*," and 102 episodes of "*Right Now with Jennifer Schuchmann*." 2015 Supplement at 12-14.

¹⁷ This cost does not include the costs of captioning Community Television's "library." These costs are discussed *infra*.

¹⁸ See 2015 Supplement at 12-14.

¹⁹ *Id.* at 12.

²⁰ See *id.* at 12-14.

²¹ See *id.*

²² *Id.* at 5.

²³ *Id.* at 4.

²⁴ At the end of FY 2014, Community Television had \$887,249 in cash, \$125,000 in savings and temporary cash investments, \$2,125 in notes and loans receivable, \$87,892 in intangible assets, and \$17,502 in prepaid expenses for total gross assets of \$ 1,119,768. Supplement at 53. Community Television had no liabilities. *Id.*

²⁵ At the end of FY 2013, Community Television had \$570,900 in cash, \$300,000 in savings and temporary cash investments, \$8,625 in notes and loans receivable, and \$91,420 in intangible assets for total gross assets of \$970,945. Supplement at 32. Community Television also had \$181,567 in current liabilities. *Id.* Therefore, Community Television had net current assets of \$789,378.

remaining cost of captioning (\$17,038.06),²⁶ Community Television would have had \$1,103,193.44 remaining. The Bureau has consistently held that closed captioning does not impose an economic burden if a petitioner can provide closed captioning using its net assets.²⁷

Furthermore, the additional expenses included in the captioning costs are, at the very least, vague, and may be unnecessary. For example, it is not clear why down conversion from high-definition to standard-definition is required or why it is a caption-related cost. Indeed, if down conversion is currently required by some stations to which Community Television provides programs, it is not an expense imposed by captioning. Therefore, the actual cost of captioning may be lower. Nevertheless, even with these additional expenses, the captioning costs do not pose an economic burden.

Similarly, it would not be economically burdensome for Community Television to caption its "library" of previous programs that are still on-air. Community Television has also requested an exemption from closed captioning its "library" of previously aired "*Babbie's House*" and "*Friends and Neighbors*" episodes that are still aired in rotation by certain stations.²⁸ It appears that Community Television has not captioned these programs since its 2006 petition was dismissed. The total cost of captioning 124 episodes²⁹ from the library at \$185 per episode³⁰ with the additional

²⁶ If Community Television had used all \$107,472 of its 2014 net revenue to provide closed captioning at a cost of \$124,510.06, Community Television would have had \$17,038.06 outstanding in closed captioning costs.

²⁷ See, e.g., *Van Buren First Assembly of God*, Dkt. No. 06-181, DA 15-839, ¶ 16 (July 21, 2015) ("[T]hat a petitioner has experienced a net current loss does not in itself, merit a determination of economic burden."), *Roman Catholic Diocese of Gaylord*, Dkt. No 06-181, DA 15-840, ¶ 19 (July 21, 2015) (no economic burden where petitioner experienced net loss in most recent reported year but had net current assets that could cover captioning costs), *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶14 (Feb. 3, 2015) (petition denied where Tupelo experienced total excess of expenses over revenue, but had current assets that would cover cost of captioning), *Dawson Memorial Baptist Church*, Dkt. No 06-181, DA 14-1872, ¶16 (Dec. 19, 2014) (no economic burden where petitioner experienced net loss in the two recently reported years, but had net current assets that could cover closed captioning costs).

²⁸ See 2015 Supplement at 12-14.

²⁹ This includes 72 episodes of "*Babbie's House*" and 52 episodes of "*Friends and Neighbors*." Supplement at 12-13.

³⁰ Supplement at 12-13.

costs³¹ identified by Community Television would be \$40,424.³² If Community Television had used net revenue to caption its library in 2014 or 2013, it would have had \$67,048 and \$270,689 remaining, respectively.³³ Similarly, if Community Television had used its net current assets to caption its library, it would have had \$1,079,344 remaining in 2014 and \$748,954 remaining in 2013.³⁴

IV. Community Television enjoyed a *de facto* waiver for six years and apparently has not captioned its programming despite the Commission's order to do so in 2012.

Community Television had a temporary waiver of the Commission's closed captioning rules from 2006 to 2012 while its original petition was pending.³⁵ After its petition was dismissed in 2012, however, it was ordered to caption the programs it provides to other outlets.³⁶ As Community Television is now requesting an economic burden exemption for its "library" of programs still aired by other stations,³⁷ it appears that it has not captioned its programs in the interim between the dismissal of its 2006 petition in 2012 and the filing of the current petition under consideration, in violation of the Bureau's order.

During this nine-year period, Community Television has had sufficient time to make financial and logistical plans in order to bring its programming into compliance with the closed captioning rules. Indeed, if Community Television had captioned the programs when they were originally aired by the other outlets, it would not be undergoing the cost of captioning its library while simultaneously captioning new episodes.

³¹ Consumer Groups have similar concerns about these questionably high additional expenses. *See supra*.

³² The total cost to caption the library of "*Babbie's House*" is \$23,472 and the total cost to caption the library of "*Friends and Neighbors*" is \$16,952. Supplement at 12-13, 17.

³³ Community Television had \$107,472 in net revenue in 2014 and \$311,133 in 2013. 2015 Supplement at 4-5.

³⁴ Community Television had net current assets of \$1,119,768 in 2014 and \$789,378 in 2013. Supplement at 32, 53.

³⁵ 47 C.F.R. § 79.1(f)(11).

³⁶ Notice of Dismissal, at 2.

³⁷ *See* 2015 Supplement at 12-14.

V. Conclusion

For the reasons described above, Consumer Groups respectfully request that the Bureau deny the waiver petition. Community Television has adequate net revenue and net current assets that could be used to provide closed captioning. Requiring Community Television to caption its programming would therefore not be economically burdensome. Nonetheless, should the Bureau conclude that Community Television has demonstrated that their financial situation makes captioning costs economically burdensome, Consumer Groups ask that the Bureau only approve an extremely limited exemption. Given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a petitioner may change, the Bureau should refrain from granting lengthy or open-ended exemptions.

Sincerely,

/s/

Drew Simshaw
Angela Campbell
Institute for Public Representation

Counsel to TDI

Cory Dodds
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Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

/s/

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CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Claude L. Stout". The signature is written in a cursive, flowing style.

Claude Stout
October 15, 2015

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on October 15, 2015, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Petitioners at the address listed below.

WATC-TV/Community Television, Inc.
c/o Gregory West, President
1862 Enterprise Drive
Norcross, GA 30093

/s/

Niko Perazich
Institute for Public Representation

October 15, 2015